IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6734 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KAMLESH MATHURBHAI PARIKH

Versus

COLLECTOR,

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Appearance:

1. Special Civil Application No. 6734 of 2001

MR BIPIN I MEHTA for Petitioner No. 1

MR N D GOHIL AGP for Respondent No. 1

MR BC DAVE for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/08/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 16/07/2001 passed by the Collector, Vadodara District, at Annexure `E' to the petition, whereby the Collector had stayed the implementation and execution of the Circular Resolution dated 05/03/2001 by which the petitioner was ordered to be reinstated in service along with back wages, which was confirmed by the General Board

by Resolution dated 27/03/2001.

2.0 The petitioner was originally appointed as a Secretary in the Nagar Panchayat on 16/06/1972. He was suspended by the then Nagar Panchayat vide Resolution dated 27/04/1984. Charge sheet was issued to the petitioner on 09/12/1984 and inquiry was initiated against him. On 10/09/1986 the Nagar Panchayat passed Resolution withdrawing the charges levelled against the petitioner and revoking the suspension order.

2.1 The said decision of the Nagar Panchayat was stayed by the District Development Officer, Vadodara, by order dated 17/11/1986. The Development Commissioner appointed an Inquiry Officer by order dated 02/08/1986. The Inquiry Officer submitted his report whereby the petitioner was exonerated from the charges levelled against him.

2.2 Pursuant to the above report, the respondent Municipality issued show-cause notice dated 30/08/1988 as to why a penalty of withholding of one increment for three years should not be imposed. The petitioner submitted his reply vide reply dated 01/11/1988. To the utter shock of the petitioner, the respondent Municipality passed Resolution dated 14/11/1988 dismissing the petitioner from service.

2.3 Feeling aggrieved by the said order of his dismissal, the petitioner preferred Reference being R.C.S. No. 209/1988 before the Civil Judge (J.D.), Padra, who by order dated 03/10/1989 stayed the order of dismissal. Thereafter, the petitioner made several representations to the respondent Municipality requesting for reinstatement in service. Two Councillors of the respondent Municipality opposed the Resolution granting reinstatement to the petitioner. By Circular Resolution dated 05/03/2001 which was confirmed by the General Board in its meeting on 27/03/2001 the petitioner was reinstated in service.

2.3 By order dated 20/03/2001, the Collector stayed the order of reinstatement of the petitioner. The petitioner preferred Revision before the State Government and by order dated 24/04/2001, the matter was remanded back to the Collector. At the relevant time, the respondent Municipality passed Resolution dated 27/03/2001, confirming the Resolution dated 05/03/2001 and cancelling the Resolution dated 14/11/1988. By order dated 16/07/2001, the Collector suspended the Resolution dated 05/03/2001 and 27/03/2001, at Annexure `E' to the

petition. Hence, this petition.

3.0 I have heard the learned Counsel for the parties and have gone through the documents produced on record. It may be noted that after the filing of the present petition, the petitioner had attained the age of superannuation i.e. on 30/11/2003. Therefore, I am not deciding the issue with respect to the reinstatement of the petitioner in service but with respect to the grant of back wages, in view of the fact that the first order which came to be passed in 1988 was contrary to the Notice issued by the Municipality.

3.1 The order passed by the Collector is required to be modified to the extent of reinstatement in service but is required to be upheld with respect to the grant of back wages. The order of the Municipality was not justified and the same is required to be quashed and set aside.

4.0 In the result, the petition is partly allowed. As the petitioner has reached the age of superannuation, in the interest of justice, the respondent Municipality will treat the petitioner in service for all practical purposes, namely, the retirement benefits.

4.1 It is made clear that the petitioner will not be entitled for any back wages. Since the petitioner has retired from service, the respondent Municipality will determine his retirement benefits and will clear all the dues on or before 31/12/2004. Rule is made absolute to the aforesaid extent with no order as to costs. Interim relief granted earlier stands vacated.

(K. S. Jhaveri, J.)

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